Supreme Court, U.S.
FILED
AUG 25 1980
MICHAEL RODAK, JR., CLERK

80-438

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

GENEVIEVE GRAYDON,

Petitioner,

v.

PASADENA REDEVELOPMENT AGENCY,

Respondent,

ERNEST W. HAHN, INC.

Real Party in Interest.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

GENEVIEVE GRAYDON, in Propria Persona
99 South Raymond Avenue
Pasadena, California 91105
(213) 793-5429 Petitioner

QUESTIONS PRESENTED

1. Are a citizen's rights to petition under the First Amendment and the rights to due process and equal protection under the Fifth and Fourteenth Amendments violated by a state statute of limitation which bars citizens from challenging a redevelopment agency's award of a $12 million construction contract without competitive bidding in violation of state law which requires competitive bidding, even though the citizens' action was commenced in court before the contract was signed by any of the parties?

2. Can the state constitutionally enact special procedural statutes applicable only to actions by citizens against local government which operate to prevent a court from invalidating a local redevelopment agency's $12 million construction contract awarded without competitive

bidding in contravention of the competitive bidding law?

3. Are citizens' rights to petition under the First Amendment and due process and equal protection under the Fifth and Fourteenth Amendments impaired by state statutes applicable exclusively to local redevelopment agencies (when members are not elected but appointed), which virtually prevent citizens from challenging in court any agency conduct, however egregious, after a general redevelopment plan has been adopted?

4. Can a municipal redevelopment agency and a developer be held to answer in damages under the general laws relating to damage actions if the impediments created by state law against the citizens in favor of the government prevent citizens' actions in court to halt an illegal construction project?

LIST OF PARTIES

GENEVIEVE GRAYDON, individually and as representative of the taxpayers of the City of Pasadena,

Petitioner,

v.

THE PASADENA REDEVELOPMENT AGENCY, a public body corporate and politic; LOUIS SHEPARD, Executive Director of the Pasadena Redevelopment Agency;

Respondents,

ERNEST W. HAHN, INCORPORATED, a California Corporation,

Real Party in Interest.

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The Order of Hearing Denied in re: 2 Civ. No. 56242, Graydon vs. Pasadena Redevelopment Agency was filed on June 4, 1980 by the California Supreme Court.

The California Supreme Court has denied relief where abuse of due process is alleged. The only recourse is to the U. S. Supreme Court.

In Hilliard v. Commonwealth of Pennsylvania, 308 F. Supp. 756 (1970), under "4. Constitutional Law" is stated: "Proscription against arbitrariness, capriciousness, or bad faith is no less applicable to state action under Fourteenth Amendment than to federal action under the Fifth Amendment. U.S.C.A. Const. Amends. 5, 14."

Petition for Writ of Mandamus and Declaratory Judgment and Injunction in Support Thereof, in Graydon vs. The Pasadena Redevelopment Agency, et al.,

Ernest W. Hahn, Inc., Real Party in Interest,. in the Superior Court of the State of California, for the County of Los Angeles, No. C 228013, was filed on January 26, 1978. (Clerk's Transcript Page 1) Petitioner alleges:

> "PARTIES 1 Petitioner Genevieve Graydon is a citizen, resident and taxpayer of the City of Pasadena, California. Petitioner brings this action on her own behalf and as representative of the taxpayers of the City of Pasadena.
>
> "2 Respondent The Pasadena Redevelopment Agency (hereafter the Agency) is a public body corporate and politic, organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 et seq.).
>
> "3 Respondent Louis Shepard is the Executive Director of the Pasadena Redevelopment Agency.
>
> "4 Real Party in Interest, Ernest W. Hahn, Inc. (hereafter Hahn) is a California Corporation. Hahn is a construction contractor and developer engaging in construction activity in the City of Pasadena.

"RELATIONSHIP BETWEEN THE AGENCY AND HAHN

"Since early 1974, the Agency and Hahn have been cooperating to promote and construct a retail shopping center in downtown Pasadena under a program by which the Agency uses its governmental powers to acquire private property with public funds for sale to Hahn for Hahn's use as a privately-owned and operated shopping center.

"THE PUBLIC PARKING GARAGE PROJECT 6 To promote the success of Hahn's retail shopping center, the Agency intends to construct a multi-million dollar underground public parking garage to park 2000 cars beneath the site of the proposed retail shopping center.

"7 The underground parking garage will be publicly owned and operated by the Agency for the use of the general public. Its construction will be paid for from public funds.

"THE COMPETITIVE BIDDING LAW

"8 California Health and Safety Code Section 33422 provides, in pertinent part:

"'Any work of grading, clearing, demolition, or construc-

tion in excess of two thousand five hundred dollars ($2,500) undertaken by the Agency shall be done by contract after competitive bids. ...'

"9 At all times herein mentioned, the Agency and Hahn were aware of the provisions of Health and Safety Code Section 33422.

"THE AGENCY'S AWARD OF A CONSTRUCTION CONTRACT TO HAHN WITHOUT COMPETITIVE BIDDING

"10 On November 2, 1977, notwithstanding the provisions of Health and Safety Code Section 33422, the Agency purported to award Hahn a contract (hereafter the Parking Garage Contract) to construct the underground public parking garage for the Agency without advertising for competitive bids.

"11 The Parking Garage Contract, the terms of which are favorable to Hahn and unfavorable to the taxpaying public, authorize payment to Hahn of a base price of eleven million nine hundred thirty thousand, four hundred and sixty-six dollars (11,930,466), which may be escalated upward upon the occurrence of numerous contingencies as provided in the Parking Garage Contract.

"THE AGENCY'S VIOLATION OF THE LAW AND MISUSE OF PUBLIC FUNDS

"12 The Agency's award of the Parking Garage Contract to Hahn without competitive bidding is illegal. The Parking Garage Contract is null and void, and of no force and effect.

"13 Payment from the Agency to Hahn of public funds pursuant to the provisions of the illegal Parking Garage Contract is unauthorized, and is a misuse of public funds.

"14 Nevertheless, Petitioner is informed and believes that the Agency has made, or proposes to make, payment of public funds to Hahn pursuant to the illegal Parking Garage Contract, and will continue to do so unless restrained by order of this court.

"15 Petitioner has no adequate remedy at law.

"WHEREFORE, Petitioner Prays that this Court issue its Writ of Mandamus to the Agency, which

"1. Directs the Agency to advertise for competitive bids before awarding a contract for the construction of the underground Parking Garage; and

"2. Declares the Parking Garage

Contract purportedly awarded by the Agency to Hahn to be illegal; and

"3. Prohibits Respondent Shepard and the Agency from disbursing any funds in accordance with the provisions of the Parking Garage Contract; and

"4. Directs the Agency to pay Petitioner her attorney's fees and costs of litigation herein; and

"5. Grants such other relief as the Court may deem proper.

"Respectfully submitted,

(Signed) MICHAEL V. McINTIRE
Attorney for Petitioner"

On February 2, 1978, the following ALTERNATIVE WRIT OF MANDAMUS AND ORDER DIRECTING ISSUANCE was filed (CT 16):

"The People of the State of California

"To Respondents Pasadena Redevelopment Agency and Louis Shepard, Executive Director of the Pasadena Redevelopment Agency.

"It appears from the verified petition on file herein that you have failed to perform your legal duty and acted beyond your legal

authority by awarding a multi-million dollar construction contract for the construction of a public parking garage without competitive bidding as required by law, and that petitioner has no adequate remedy at law.

"THEREFORE, you are commanded, upon receipt of this writ, to advertise for competitive bids for the construction of the public parking garage described in the petition herein; to direct Ernest W. Hahn Co., Real Party in Interest, to cease and desist from all further work under the contract previously awarded without competitive bidding; and to withhold all payments of public funds to Ernest W. Hahn Co. under such contract; or

"IN THE ALTERNATIVE, to show cause before this court on February 22, 1978, at 9:00 A.M., in Dept. 85 of the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, California, why you have not done so.

"Dated Feb. 2 1978 John J. Corcoran, Clerk (name stamp) Deputy Clerk, (signature illegible)

"LET THE FOREGOING WRIT ISSUE

"IT IS ORDERED that a copy of this alternative writ and Petitioner's points and authorities be served on Respondents and the Real Party In Interest herein not later than February 7, 1978
Dated Feb 2 1978
(Signed) Levin
Arnold Levin Commissioner"

This lawsuit is a simple mandamus suit. Petitioner did not attack the bond issues, which were specifically validated in a prior lawsuit by another person. Petitioner does not come within the purview of the Code of Civil Procedure, the basis for the Respondents' 6th and 7th defenses and the basis of the Court's judgment.

On November 2, 1977, the PRA awarded the contract to Hahn, without competitive bidding, without a resolution required under the Code of Civil Procedure and without a contract. On January 26, 1978, the lawsuit was filed. On February

8, 1978, the completed contract was signed. The Court, in the Hearing on March 7, 1978, was concerned that petitioner had filed the suit more than 60 days after the contract was awarded. At the time of the Hearing it had not been discovered that there was no resolution. The Court appeared to be unconcerned that the contract did not exist until after the suit was filed. The Court, after a long discourse on his theory that if you cannot find a case to base your case on you try to discern an attitude or approach, is quoted on Page 32 of the Court Transcript of March 7, 1978:

> "... Maybe we should try the whole case, including this, and rule on it all at once, and then at least everybody knows where he stands, because this is an $11.5 million contract and you say

you have spent a few hundred thousand dollars at this point. By the time the case goes up on appeal, it will be over with if I don't enjoin it. And there are cases that say that a public official who makes an unlawful disbursal of public funds has to cough it up out of his own pocket. So I don't know whether you want to consult with your client before asking me to rule in your favor on these affirmative defenses or not.

"MR. JACOBS: There used to be an old rule that a lawyer didn't go to jail, and even that has been changing.

"THE COURT: No, the rule was that a lawyer is supposed to see to it that he doesn't go to jail. It's just that he doesn't always succeed.

"MR. JACOBS: Recently, it didn't work too well."

Judge Phillips did not "try the whole case." He demanded that petitioner obtain depositions costing about $2,000 and then held another Hearing without them and with the finding on the statute of limitations alone.

This conduct must be a very serious abuse of due process of law! All of the California courts have abused due process of law in this case. The actions of these courts, sanctioning the contravention of law, have injured the petitioner's civil right to protect her reputation. The courts have made her the villain and the officials, disdainful of the law, the heroes. They are credited with creating private commercial progress with proceeds from $58,000,000 in bonds about to default, with interest making a total of around $114,000,000. The courts say the power brokers are right! The protesting citizen is wrong! The petitioner, dedicated to upholding the Constitutional protection of private property against the taking for private developers (California Redevelopment

Agencies have unlimited power of eminent domain, exceeding that of cities) has only succeeded in discouraging future citizen protests against the power brokers. Look what happened to Genevieve Graydon!

The Supreme Court should review and look at Redevelopment abuse and adopt new guidelines.

LIST OF CORRECTIONS IN SUPPORT OF PETITIONER:

1. Respondents cannot justify contravention of competitive bidding in the construction contract awarded to Hahn:

NO VALIDATION SUIT

In the Findings of Fact and Conclusions of Law, Finding 19 states (CT 729):

> "Attachment 4, Article X to the DDA provides that it was the desire of the PRA, subject to legal requirements, to negotiate a contract with the Developer's general con-

tractor, Ernest W. Hahn, Inc., for the negotiated maximum construction price of $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction of the subterranean garage, if construction commenced after January 1, 1977. The DDA also required the Developer or its general contractor, Ernest W. Hahn, Inc., to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor, not to exceed $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon the monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction, if construction commenced after January 1, 1977."

The entire Finding 19 has been quoted to prove nothing is taken out of context.

Under CONCLUSIONS OF LAW 1. is

stated:

> "The Court concludes in all respects as set forth in the foregoing Findings of Fact.

The CONCLUSIONS OF LAW are strictly based upon Government Code Section 53511, permitting the Agency to bring an action to determine validity of its bonds, warrants, contracts and evidence of indebtedness pursuant to Chapter 9 of Title 10, Part 1 of the Code of Civil Procedure. This is the Code under which Respondents' 6th and 7th defenses are claimed and the basis of the Court's judgment of late filing against the petitioner.

The only CONCLUSIONS OF LAW concern these foregoing Codes. No mention is made of California Health and Safety Code Section 33422, demanding competitive bidding in this case, yet its final CONCLUSION, No. 12. states:

> "Respondents are entitled to a judgment (1) denying the Petition for Writ of Mandate, (2) declaring that petitioner take nothing by her action and (3) awarding respondents and each of them their costs of suit incurred herein."

This was signed by Judge Charles H. Phillips, on June 15, 1978.

If this case was truly, without any exceptions, which petitioner denies, required to file a lawsuit within 60 days of the awarding of the contract, Judge Phillips should have thrown it out of court in the first Hearing, as ineligible to be heard, instead of stating "Maybe we should try the whole case," which he did not do. Petitioner should not have been required to incur $2,000 in cost of depositions, not used. Also, all taxpayers in Pasadena should not be penalized for delinquency in filing by one citizen, filing on their behalf.

In the Finding No. 19, with which the "Court concludes in all respects," the negotiated contract is "subject to legal requirements," and Hahn is required "to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor."

This lawsuit is a demand on the PRA to do just that. Without trial of this petition the judgment of Judge Charles H. Phillips is "bad faith" under the Fourteenth Amendment.

In the Declaration of Genevieve Graydon (CT 254) in regard to the meeting on January 28, 1975 of the City Board for presentation of the Disposition and Development Agreement for the retail center by the PRA, Gerald Trimble, PRA's Executive Director, "referring to the Agency's desire to award the contract to con-

struct the underground garage to Hahn without competitive bidding, said:

> 'Since we are a public agency, we are required by redevelopment law to go out for public bid on it, a public facility of this nature. We're required to have a validation suit. O'Melveny and Myers (Agency Bond Counsel) is requiring this before they would give us an opinion of counsel, a bond opinion. The same thing was done in the City of Hawthorne. The same approach will be taken here.'"

The PRA never filed the validation suit. This is not due process of law.

LIST OF CORRECTIONS, 2.:

Without competitive bidding there is no way of knowing how much of the payment under the contract to Hahn is a gift of public funds. Hahn put in competitive bids on the Mall's above ground Los Robles Garage and two Pedestrian Bridges, which while higher than the awardee's bids, could be compared therewith. These were basic lump sum bids. Copies of the

actual bid proposals of Hahn and the awardee are in the possession of the petitioner. Hahn's bid on the garage, $2,843,675, and the awardee's, $2,433,200, shows a difference of $410,475. Hahn's bid on the bridges, $649,000, and the awardee's, $592,500, shows a difference of $56,500.

LIST OF CORRECTIONS, 3.:

The claim that only Hahn could build the subterranean garage because it is integrated with the mall built on the top of it is disputed by the fact that the Holiday Inn was built on top of the Conference Center Garage, across the street from the Mall, at different times with different contractors. The permit to build the garage was taken out on November 22, 1971, with contractor Turner Construction Co. The permit for the Holiday Inn was taken

out on April 28, 1975, with contractor P. J. Walker Co. The permit for revisions to support the hotel on top of the garage was taken out on April 23, 1975, with contractor Willens & Bertisch Co. There was some difficulty in the financing, the delay of which petitioner believes has been claimed by Respondents as a problem of integration. The close dates of the permits for the hotel and the structural supports needed shows no delay. In an article in the Pasadena Star-News, August 29, 1974, Executive Director of the PRA, Gerald M. Trimble, said:

> "Things are as they have been for some time with Mr. Chen." Developer of the hotel. "It is possible construction could start then, of course, but we have no way of knowing at this time when work will actually begin. We have nothing signed."

LIST OF CORRECTIONS, 4.:

The Opinion of Attorney Eugene B. Jacobs

requested by the PRA to contravene the competitive bidding law is explained in Finding 21 of Findings of Fact and Conclusions of Law (CT 731):

> "The award of the contract was made in reliance upon a written opinion dated October 4, 1977, of the Law Offices of Eugene B. Jacobs, General Counsel to the Agency, that the competitive bidding requirements of Health and Safety Code Section 33422 were not applicable to the construction contract for the subterranean garage which is to be the support for and integrated with and provide access to the Retail Center."

This Opinion is a sham. Its use and reference in Finding 21 above to avoid competitive bidding is a very serious abuse of due process, which if it had been had in court it would have protected the citizens of Pasadena against a gift of public funds. Petitioner has prepared a comprehensive analysis of every case cited as case law against

competitive bidding. Not one case supports this. The competitive bidding law is restricted to "grading, clearing, demolition, or construction." It does not relate to consultants, architects, engineers, etc. These cases are either irrelevant or actually support the petitioner. An example of the latter is Kennedy v. Ross, (1946) 28 Cal. 2d 569, 170 P. 2d 904, 912. It concerns a consulting engineer. The Opinion adroitly omits the California State Supreme Court requirement for competitive bidding. In the quotation from the case below the underlined portion was omitted in the Opinion:

> "...It is also true that the framers of the charter were at pains to require that contracts for the construction of public works should be subject to competitive bidding, and it is assumed that all contracts for the construction of the improvement will conform to that procedure. But it does not follow

> that strict compliance with that requirement must be maintained in procuring expert services to furnish plans and specifications for the construction ..."

In the Opinion the quotation which precedes the omission was paraphrased and that which follows the word "But" was quoted.

Another example: Meakin v. Steveland, Inc. (1977) 68 Cal. App. 3d 490, 137 Cal. Rptr. 359, 363-364. This case related to the vacation and sale of a street in San Francisco. Stated therein:

> "Before trial, however, respondents Steveland, Inc. and First Market Company (hereinafter developers) completed the construction of a 40-story office building on the adjoining property, using certain developmental rights arising from the acquisition of Ecker Street. Hence, if appellant should ultimately prevail, his only remedy now would be in the form of damages."

With the subject case not tried on the issues in the California Courts and

seeking recourse in the U. S. Supreme Court, the subterranean garage is close to completion, which places this case in the same category of the only remedy being damages for the citizens of Pasadena.

The Opinion is a sham. On Page Four is stated:

> "The Agency has been advised that it would take approximately two months to complete the public bidding process, including the time to prepare and receive plans and specifications, contract documents, and to analyze bids."

It appears that the Agency's architect, Charles Kober and Associates, collected three letters from consulting firms and then sent them to Eugene Jaccbs' Office on March 1, 1977. Why? This was seven months before the date of the Opinion, October 4, 1977. If, as shown above, only two months would be required to furnish competitive bids why

was preparation made seven months ahead for Jacobs' Opinion, instead of obeying the statutory law requiring competitive bidding? This would have forestalled the necessity for an Opinion with the consequent lawsuit.

LIST OF CORRECTIONS, 5.:

Res Judicata: The APPEAL which affirmed the judgment against the petitioner was concurred in by Justice Delbert E. Wong, who, while a Deputy Attorney General of the State of California, on January 19, 1955, wrote Opinion No. 54-169, significantly on "Subject: Community Redevelopment." The Appeal, Page 4, states:

> "... Additionally, respondents alleged as affirmative defenses, among other things, that the validity of the plan and contract awarded was previously adjudicated in a prior lawsuit by appellant (Graydon v. Board of Directors, et al.)..."

This is not true. How could the petitioner have known in 1975 that the PRA would break the law in 1977? In LIST OF CORRECTIONS IN SUPPORT OF PETITIONER, No. 1. above, under NO VALIDATION SUIT, it is recounted that the DDA required that Hahn was "to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor." Also, PRA Executive Director Gerald M. Trimble told the City Directors that a validation suit would be filed. This never happened.

In that lawsuit, the petitioner, who is not an attorney, studied the California State Health and Safety Code, relative to Redevelopment, thoroughly and could not find that the suddenly exposed Disposition and Development Agreement qualified thereunder, especially relative

to blight and sufficiency of tax increment for the total prospective bond issues. Space not permitting a full list of the charges, a portion of one is:

> "...Further, plaintiff declares that her suit is brought under the 14th Amendment of the United States Constitution as a citizen/taxpayer deprived of municipal services, bereft of taxes illegally impounded for the Pasadena Redevelopment Agency."

In contrast to the present case, the plaintiff in that case did receive due process of law, since Judge Arch R. Tuthill, while telling plaintiff that her papers weren't sufficient at that point, gave her 30 days in which to amend her petition. He also overruled the motion to strike. The plaintiff had done all she could at that time and believed it would be unethical on her part to prolong the proceedings. She did not accept the 30 days in which to amend. Neither did she sanction a future contravention of the

competitive bidding law in awarding a contract which did not exist in April, 1975, nor on November 2, 1977, nor on January 26, 1978, the date of filing subject mandamus lawsuit.

Another reason the Supreme Court should accept this petition for writ of certiorari is it is time for the Court to reanalyze the holding in Berman v. Parker (348 US 26, 99 L ed 27, 75 S Ct 98), decided November 22, 1954. Redevelopment has evolved from civic improvement to developer subsidies -- from slum clearance to private shopping malls.

What was known only to researchers a few years ago has become openly exposed throughout the State of California. The Redevelopment law permits the dangerous takeover of private property, not for public use. An example of this is the recent expose' by the Los Angeles Herald-

Examiner of Redevelopment's creation, the City of Industry, an industrial complex with 630 residents and plans which will cost the taxpayers $600 million.

The New Jersey Supreme Court on February 22, 1971, upheld a finding of "blight" in Levin v. Township Committee of Bridgewater, (57 NJ 506, 274 A2d 1, 45 ALR3d 1054). In Justice Haneman's dissent, over 16 years after Berman v. Parker, he challenged the abuse of special interests. He said on page 1087:

> "These extensions of the concept of eminent domain, to encompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. And it behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights. The reasoning upon the point begins with the basic concept of natural rights and of property as one of those rights. To secure those rights governments were instituted, says the Declaration, and to secure them governments may impose limitations upon them; moreover, by

clear implication the Fifth Amendment authorizes the taking of private property for public use. But here is the end of government power. That the Government may do whatever it deems to be for the good of the people is not a principle of our system of government. Nor can it be, because the ultimate basic essential in our system is that individuals have inherent rights, and as to them the powers of government are sharply limited. There is no general power in government, in the American concept, to seize private property. Hence it is universally held that the taking of private property of one person for the private use of another violates the due process of law clauses of the Fifth and Fourteenth Amendments. The reasoning which applies to this right is the same as that which applies to other rights guaranteed by the Constitution."

Long ago in Britain, the famous Judge William Blackstone said:

"Regard of the law for private property is so great that it will not authorize the least violation of it, not even for the general good of the whole community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good."

Also, William Pitt said:

"... The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter, but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement."

In Propria Persona

Signed: Genevieve Graydon

Dated: August 13, 1982

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A P P E N D I X

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GENEVIEVE GRAYDON, individually and as a representative of the taxpayers of the City of Pasadena,

Petitioner,

vs.

THE PASADENA REDEVELOPMENT AGENCY, etc. et al.

Respondents.

ERNEST W. HAHN, INC., etc.

Real Party in Interest.

PROPOSED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

F I L E D

JUN 15 1978

John J. Corcoran County Clerk

L. W. Seabury

By L. W. Seabury, Deputy

NO: C 228 013

The within action came on regularly for trial on March 7, 1978, and March 20, 1978, in Department 88 of the above-entitled court. The parties were represented by their attorneys of record. Documentary evidence was introduced by petitioner and respondents. Testimony was presented by deposition and declaration. The matter was briefed, argued and submitted for decision.

Wherefore, the court being fully advised in the premises now renders its

decisions and makes its findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner Genevieve Graydon is, and at all times pertinent hereto, was a resident of the City of Pasadena, California.

2. Respondent Pasadena Redevelopment Agency ("PRA") is, and at all times pertinent hereto was, a public body, corporate and politic, organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.).

3. Respondent Louis Shepard is now and ever since November 16, 1977, has been the Executive Director of the PRA. Gerald M. Trimble, between July 6, 1971 and June 14, 1977, was the Executive

Director of the PRA.

4. Real Party in interest, Ernest W. Hahn, Inc. is, and at all times pertinent hereto was, a California corporation.

5. On December 22, 1970, the PRA, pursuant the Community Redevelopment Law, passed and adopted its Resolution No. 70-25 which said Resolution approved the Redevelopment Plan for the Downtown Redevelopment Project (the "Plan") and recommended that the Board of Directors of the City of Pasadena ("City Board") adopt the Plan.

6. On December 29, 1970, the City Board passed and adopted ordinance No. 5005 which said ordinance approved and adopted the Plan.

7. The Plan provides for the elimination and prevention of blight in the Downtown Redevelopment Project Area

by the acquisition of certain real property, demolition and removal of certain buildings and improvements, relocation assistance to displaced occupants, installation of public improvements, disposition of property for uses in accordance with the Plan and redevelopment thereof by private enterprise and other agencies for uses in accordance with the Plan.

8. By Ordinance No. 5005, the City Board of the City of Pasadena stated its purposes and intent with respect to the Downtown Redevelopment Project Area are to eliminate the conditions of blight existing therein; insure as far as possible that causes of blighting conditions be eliminated or protected against; provide for participation by owner and tenants engaged in business in the Project area; encourage and insure the rehabili-

tation, rebuilding and redevelopment of the Project area; encourage and foster the the economic revitalization of the Project area; relocate owners and occupants of the Project area as needed; and to redevelop and rebuild the public facilities in the Project Area. By Ordinance No. 5005, the City Board found that the Project Area is a blighted area, the redevelopment of which is necessary to carry out the public purposes declared in the Community Redevelopment Law.

9. On February 7, 1975, after lengthy negotiations the PRA approved and entered into a Disposition and Development Agreement (DDA) with H-CHH Associates, a partnership (the Developer) comprised of Ernest W. Hahn, Inc., a well-known shopping center developer and Carter Hawley Hale Stores, Inc. a well-

known corporation owning large department stores including the Broadway, for the development of a regional shopping center pursuant to the Plan. The DDA was approved by the Board of Directors of the City of Pasadena on January 28, 1975, and was executed by the Developer on January 28, 1975, and by the PRA on February 7, 1975.

10. A First Implementation Agreement to the DDA was executed by the Developer on August 19, 1976 and by the PRA on August 24, 1976.

11. The DDA as implemented by the First Implementation Agreement provided for the development by the Developer and the PRA of a retail center on a site located in the Downtown Redevelopment Project area bounded by Marengo Avenue, Los Robles Avenue, Colorado Boulevard and Green Street consisting of approximately

11.3 acres. The Retail Center was and is planned and designed to be a complex of approximately 600,000 square feet of retail shopping consisting of the Broadway on the eastern portion and J.C. Penney on the western portion with an enclosed air-conditioned two-level mall and specialty shops along the mall between the department stores.

The Retail Center will have public parking facilities consisting of a two-level subterranean parking garage for approximately 2000 vehicles located beneath and integrated with the Retail Center above the garage, one above-grade public parking structure located to the west of the Retail Center on the west side of Marengo Avenue for approximately 700 vehicles and one above-grade public parking structure located to the south of the Retail Center on the south side of

Green Street for approximately 530 vehicles.

12. Under the DDA and as implemented by the First Implementation Agreement, the PRA was obligated to purchase the property required for the Retail Center and the public parking facilities, relocate occupants, demolish and clear improvements existing on the property, construct the subterranean garage and the two above-grade garages and finance such activities from the proceeds of a series of lease-revenue bonds to be issued by the PRA. The DDA also provided that the PRA would sell to the Developer an air space parcel above the subterranean garage in which the Developer would construct the Retail Center.

13. Following the execution of the DDA, the PRA and Developer negotiated with the two major department stores in-

volved in an effort to arrive at a Construction, Operation and Reciprocal Agreement ("REA") which would bind the department stores as well as the Developer and the PRA. It was necessary to have the department stores committed to the development of the Retail Center before the project could go forward and before the bonds to finance the public cost of the development could be issued and sold. On August 24, 1976, the REA was agreed to by the PRA Developer, J.C. Penney Co. and Carter Hawley Hale Stores, Inc.

14. On August 6, 1976, the PRA approved a lease between the PRA and the City of Pasadena, which was approved by ordinance of the City of Pasadena, and a Reimbursement Agreement between the PRA and the City of Pasadena. These documents together with the DDA, First Implementation Agreement and the REA provided

that the public parking facilities would be constructed by the PRA and leased to the City of Pasadena with the lease payments providing the principal security for the lease-revenue bonds. The Reimbursement Agreement provided that the lease payments from the City of Pasadena to the PRA could be reimbursed by the PRA from tax increments generated by the Retail Center or from other developments in the Downtown Redevelopment Project area.

15. On August 6, 1976, the PRA authorized the issuance of the first of a series of lease-revenue bonds partially to finance the acquisition of the Retail Center site and to finance other PRA activities. On August 24, 1976, the PRA awarded the sale of such lease-revenue bonds to the lowest bidder.

16. In August, 1976, a group of

Pasadena citizens circulated referendum petitions requesting the Board of Directors of the City of Pasadena to rescind the ordinance approving the lease or hold an election in connection with the lease-revenue bonds because of their concern that the City's general fund could be obligated for the lease payment to the PRA.

17. On October 12, 1976, the Board of Directors of the City of Pasadena rescinded the ordinance approving the lease between the PRA and City of Pasadena and approved the issuance of up to $62 million in tax allocation bonds by the PRA as the method of financing the project and other costs of the Downtown Redevelopment Project.

18. On October 14, 1976, the PRA authorized the issuance of tax allocation bonds not to exceed $32 million a portion

of the proceeds of which was to finance the acquisition of land, relocation and demolition for the Retail Center. Said bonds were sold on November 4, 1976, and delivered on November 16, 1976.

19. Attachment 4, Article X to the DDA provides that it was the desire of the PRA, subject to legal requirements, to negotiate a contract with the Developer's general contractor, Ernest W. Hahn, Inc., for the negotiated maximum construction price of $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction of the subterranean garage, if construction commenced after January 1, 1977. The DDA

also required the Developer or its general contractor, Ernest W. Hahn, Inc., to submit to the PRA a firm competitive bid or bids for the construction of the subterranean garage, at such times as the PRA advertised therefor, not to exceed $10,742,478 based upon a commencement of construction date of January 1, 1977, subject to being increased or decreased as agreed upon based upon the monthly changes in the Engineer News Record for the greater Los Angeles area from January 1, 1977, to the actual date of commencement of construction, if construction commenced after January 1, 1977.

20. The First Implementation Agreement to the DDA executed by the Developer on August 19, 1976, and by the PRA on August 24, 1976, revised the provisions of the DDA with regard to the construction of the subterranean garage. Such

revision provided for construction by the Developer or its general contractor, Ernest W. Hahn, Inc., at a negotiated maximum price of $11,335,360 (increased from $10,742,478, as provided in the DDA, because of additional information acquired and changes required by the PRA) based upon a commencement of construction date of January 1, 1977, subject to an increase at the rate of one half per cent per month for each month after January 1, 1977, to the actual date of commencement of construction and required the Developer or its general contractor, Ernest W. Hahn, Inc., to submit a competitive bid, if advertised by the PRA, at a maximum price of $11,335,360 based upon a start of construction date of January 1, 1977, subject to an increase of one half per cent per month to actual start of construc-

tion.

21. On November 2, 1977, the governing body of the PRA at its regular public meeting awarded and authorized execution of a negotiated contract for construction of the subterranean garage to Ernest W. Hahn, Inc. not to exceed a guaranteed maximum price of $11,939,466 according to the terms of said contract. Said maximum price was based on the commencement of construction date of November 15, 1977, and the amount of $11,335,360 provided for in the First Implementation Agreement plus the sum of $595,068 which sum represents $56,676.80 per month for the period between January 1, 1977, and November 15, 1977. Petitioner was present at said PRA regular meeting of November 2, 1977, and was thus aware of the award and authorization of said contract. The award of the contract

was made in reliance upon a written opinion dated October 4, 1977, of the Law Offices of Eugene B. Jacobs, General Counsel to the Agency, that the competitive bidding requirements of Health and Safety Code Section 33422 were not applicableto the construction contract for the subterranean garage which is to be the support for and integrated with and provide access to the Retail Center.

22. On December 15, 1977, the PRA sold and awarded $26 million tax allocation bonds to finance the construction by the PRA of the public parking facilities for the Retail Center. The official statement with respect to said bonds stated that the contract identified in Finding No. 21 had been awarded in reliance of the opinion identified in Finding No. 21. The bonds are to be paid partially from tax increments generated

by the Retail Center which will begin to flow when the Retail Center is constructed.

23. The PRA's statutory purpose, pursuant to the Community Redevelopment Law, the Plan and the purpose and intent of the City of Pasadena with respect to the Plan and the Downtown Redevelopment Project is to eliminate the conditions of blight in the Downtown Redevelopment Project Area and to redevelop said area pursuant to the Plan. The contract identified in Finding No. 21 is directly linked to and is part of the PRA's method of financing the public costs of the Retail Center and the redevelopment of the Downtown Redevelopment Project Area, the purpose of the PRA in the implementation of the Plan and the manner in which such purpose of the PRA must be financed and has been financed. The

ability of the PRA to operate and accomplish its statutory purpose and the purposees of the Plan would be substantially impaired unless the contract identified in Finding No. 21 is subject to a prompt validation procedure.

24. The contract identified in Finding No. 21 is a contract subject to the validation procedures contained in Chapter 9 (commencing with Section 860) of Article 10 of Division 1 of the Code of Civil Procedure. Any action by an interested person challenging the validity of said contract must be brought within 60 days after the PRA awarded and authorized the contract identified in Finding No. 21 which was on November 2, 1977.

25. There is no evidence of any acts of the PRA which would estop the PRA from asserting the bar of the 60 day

statute of limitation under Code of Civil Procedure Section 860 and 863.

26. This action was commenced on January 26, 1978, which is 85 days after the award, on November 2, 1977, of the contract identified in Finding No. 21.

27. The Court finds in all respects set forth in the Conclusions of Law following these Findings of Fact.

CONCLUSIONS OF LAW

1. The Court concludes in all respects as set forth in the foregoing Findings of Fact.

2. Government Code Section 53511 provides that a local agency may bring an action to determine the validity of its bonds, warrants, contracts and evidence of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 1 of the Code of Civil Procedure.

3. Government Code Section 53510 defines local agency as any city, county, city and county, public district or any public or municipal corporation, public agency or public authority. The PRA is a local agency within the meaning of Government Code Section 53510.

4. Code of Civil Procedure Section 860 provides that a public agency may bring an action to determine the validity of any matter which is authorized to be determined pursuant to Chapter 9 of Title 10 Part 1 of the Code of Civil Procedures within 60 days after the existence of such matter.

5. Code of Civil Procedure Section 864 provides that for the purposes of said Chapter 9 of Title 10 of Part 1 of the Code of Civil Procedure, contracts shall be deemed to be in existence upon the date of their authorization and that

and that contracts shall be deemed authorized as of the date of adoption by the governing agency of the public agency of a resolution approving the contract and authorizing its execution.

6. Code of Civil Procedure Section 863 provides that if no action has been brought by the public agency pursuant to Chapter 9 of Title 10 of Part 1 of the Code of Civil Procedure to determine the validity of a matter within 60 days after the existence of a matter, any interested person may bring action, within the time prescribed by Code of Civil Procedure Section 860, to determine the validity of the matter.

7. The contract for the construction of the subterranean garage between the PRA and Ernest W. Hahn, Inc. was in existence on November 2, 1977, within the meaning of Code of Civil Procedure

Section 864.

8. The contract identified in Conclusion No. 7 is such that Respondent PRA's ability to operate would be substantially impaired absent a prompt validation procedure as to said contract.

9. This action is subject to the provisions and procedures contained in Chapter 9, of Title 10, of Part 1 of the Code of Civil Procedure and must have been brought within a 60 day period from the existence of the contract identified in paragraph 7 hereof, as provided in Code of Civil Procedure Sections 860 and 863, which period commenced to run on November 2, 1977, and which expired on January 3, 1978.

10. This action was filed more than 60 days after the existence of the contract identified in Conclusion No. 7 and is barred by the provisions of Code of

Civil Procedure Sections 860 and 863.

11. Respondents are not estopped from asserting that this action is barred by the 60 day statute of limitations provided for in Code of Civil Procedure Section 860 and 863.

12. Respondents are entitled to a judgment (1) denying the Petition for Writ of Mandate, (2) declaring that petitioner take nothing by her action and (3) awarding respondents and each of them their costs of suit incurred herein.

DATE: June 15, 1978

(Signed) Charles H. Phillips
Judge of the Superior Court

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GENEVIEVE GRAYDON,

Appellant,

v.

THE PASADENA REDEVELOPMENT AGENCY, et al.,

Respondents.

ERNEST W. HAHN,

Real Party in Interest.

2 Civ. No. 56242

(Super. Ct. No. C-228,013)

O R D E R

COURT OF APPEAL-SECOND DIST.

F I L E D
APR 8-1980

CLAY ROBBINS, JR. Clerk

Deputy Clerk

THE COURT:*

The letter request of counsel for respondents for the publication of the opinion in the above entitled case filed on March 25, 1980, is denied for the reason that the court does not believe that it meets the standards for publication set forth in Rule 976, California Rules of Court.

Pursuant to Rule 978, California Rules of Court, the clerk is directed to forward to the Supreme Court a copy of counsel's letter of April 3, 1980, a copy of the aforementioned opinion and a copy of this order.

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* KINGSLEY, Acting P.J.; WONG, J.**

** Assigned by the Chief Justice of California.

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

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DIVISION FOUR

GENEVIEVE GRAYDON,

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F I L E D
APR 15 1980

CLAY ROBBINS, JR. Clerk

Deputy Clerk

THE COURT:*

The court has read and considered a letter dated April 9, 1980, from R. Brent Hawkins, on behalf of the firm of Jacobs, Weiser, Kane, Ballmer & Berkman, co-counsel for respondents in the above entitled matter, and a letter, dated April 9, 1980, from David K. Robinson, on behalf of the firm of Hahn & Hahn, co-counsel for said respondents. Both letters seek publication of our opinion in the above entitled case filed on March 25, 1980. A similar request by the City Attorney for the City of Pasadena was denied by our order filed on April 8, 1980. Further review of the two letters above mentioned leads us to conclude that the opinion should be published as meeting the standards set forth in Rule 976, California Rules of Court. Therefore,

IT IS ORDERED: (1) that our order of April 8, 1980, be vacated; and (2) that the opinion filed herein on March 25, 1980, be published in the official reports.

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* KINGSLEY, Acting P.J.; WONG, J.**

** Assigned by the Chief Justice of California.

NOT FOR PUBLICATION IN
THE OFFICIAL REPORTS.

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GENEVIEVE GRAYDON,

Appellant,

v.

THE PASADENA REDEVELOPMENT AGENCY, et al.,

Respondents,

ERNEST W. HAHN,

Real Party in Interest.

2 Civ. No. 56242

(Super. Ct. No. C 228013)

COURT OF APPEAL-SECOND DIST.

F I L E D

MAR 25 1980

CLAY ROBBINS, JR. Clerk

Deputy Clerk

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Charles H. Phillips, Judge. Affirmed.

Sheldon B. Chernove for Appellant

Hahn & Hahn, David K. Robinson, Jacobs, Weiser, Kane, Ballmer & Berkman, Eugene B. Jacobs and Robert P. Berkman, for Respondents.

Barrett, Stearns, Collins, Gleason & Kinney, and William N. Willens, for Real Party in Interest.

This is an appeal from a judgment and order denying a writ of mandate and awarding costs of suit to respondent, Ernest W. Hahn, Inc. (hereafter "Hahn").

Respondent The Pasadena Redevelopment Agency (hereafter sometimes "Agency" and sometimes "PRA"), following

many studies, plans and negotiations, entered into an agreement in 1975 with a developer (H-CHH Associates, a partnership comprised of respondent Hahn and Carter Hale Hawley Stores, Inc.) for the development in Pasadena's blighted central business district of a major retail shopping center.

To finance the public cost of the retail shopping center development for acquisition of land, demolition of buildings, relocation of residents and businesses, and construction of required parking facilities comprised of a subterranean garage beneath the shopping center and two above ground parking structures, the Agency sold tax allocation bonds in the principal amount of approximately $58,000,000.

On November 2, 1977, at a public meeting at which appellant was present,

Agency's governing body awarded and authorized execution of a negotiated contract for construction of the subterranean garage for the project to Hahn for a maximum price not to exceed $11,939,466 based on a commencement date of November 15, 1977. The subterranean garage is a publicly owned garage. The retail center above it will be owned by the developer constructed in air rights purchased by the developer over the garage. In its brief, respondent alleges that as of October 8, 1979 (the date of the brief), the subterranean garage was then approximately 80 percent complete.

The central issue presented on appeal is whether this action is barred by the limitation provisions of Code of Civil Procedure sections 860 through 870. (Throughout this opinion, all references to code sections will be to the Code of

Civil Procedure unless otherwise noted.)

Appellant's petition for mandamus filed on January 26, 1978, alleged, among other things, that the contract for the construction of the subterranean garage for the retail center was awarded without competitive bidding in violation of the provisions of Health and Safety Code section 33422;[1] that the contract was favorable to Hahn and unfavorable to the taxpaying public; that payment pursuant to the contract is unauthorized and a

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1/ The relevant portion of Health and Safety Code section 33422 then provided: "Any work of grading, clearing, demolition, or construction in excess of two thousand five hundred dollars ($2,500) undertaken by the agency shall be done by contract after competitive bids."

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misuse of public funds. Appellant sought a writ of mandamus which would direct the Agency to advertise for competitive bids

before awarding a contract for the construction of the subterranean garage; would declare that the contract between the Agency and Hahn was illegal; and would prohibit respondents from disbursing funds in accordance with the contract.

Appellant contends that as she framed this action in mandate, the validation requirements provided in sections 860 through 870 are inapplicable. Appellant's challenge focuses upon the procedure utilized by the Agency in obtaining the contract. In sum, she claims that sections 860 through 870 do not apply to this case.

The respondents' answers alleged that competitive bidding was not required in this case for the construction of the subterranean garage because of the integrated nature of that garage and the ma-

jor retail center; that the purposes of competitive bidding would not be accomplished and because construction of that garage without competitive bidding would be advantageous and in the public interest. Additionally, respondents alleged as affirmative defenses, among other things, that the validity of the plan and contract awarded was previously adjudicated in a prior lawsuit by appellant (Graydon v. Board of Directors, et al.); that appellant's claims were barred by her laches; that she was equitably estopped from asserting those claims; and that this action by appellant is barred because it was not filed within the time prescribed under section 860 et seq., made applicable by Government Code section 53511, and because she failed to comply with the requirements of section 860 et seq., with respect to the notice

requirements thereof.

As a general rule, competitive bidding for public entities is a mandatory requirement as provided by statute, charter or ordinance (see here Health & Saf. Code, section 33422). However, there are certain well recognized exceptions to said rule. One exception is where the nature of the subject of the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible. (Kennedy v. Ross (1946) 28 Cal. 2d 569; San Francisco v. Boyd (1941) 17 Cal. 2d 606; Los Angeles Dredging Co. v. Long Beach (1930) 210 Cal. 348; Los Angeles G. & E. Corp. v. Los Angeles (1922) 188 Cal. 307; Meakin v. Steveland, Inc. (1977) 68 Cal. App. 3d 490; County of Riverside v.

Whitlock (1972) 22 Cal. App. 3d 863; Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685; Orange County Water Dist. v. Bennett (1958) 156 Cal. App. 2d 745; Miller v. Boyle (1919) 43 Cal.App.39.)

The rationale for the adoption of the above exception is found in the purposes of the provisions requiring competitive bidding in letting public contracts. Those purposes are to guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent the waste of public funds; and to obtain the best economic result for the public. (10 McQuillin, Municipal Corporations (3d ed.) section 29.29.) However, the competitive bid requirement is to be construed fairly and reasonably with sole reference to the public interest and in light of the purposes to be

accomplished. (City of Inglewood-L.A. County Civic Center Auth. v. Superior Court (1972) 7 Cal. 3d 861; Cyr v. White (1947) 83 Cal. App.2d 22, 10 McQuillin, Municipal Corporations (3d ed.) section 29.29.) Therefore, it has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form, competitive bidding is not applicable. (2 Dillon, Municipal Corporations (5th ed.) section 802.)

This principle has been held applicable in California decisions in a variety of situations involving both the purchase of services and products and the construction of public improvements and

buildings where it has appeared that competitive bidding would be incongrous (sic) or would not result in any advantage to the public entity in efforts to contract for the greatest public benefit. It has also been applied in fact situations in which the governmental entity has entered into contracts for personal services depending upon a peculiar skill or ability (Kennedy v. Ross, supra, 28 Cal. 2d 569; San Francisco v. Boyd, supra, 17 Cal. 2d 606; Miller v. Boyle, supra, 43 Cal.App. 39); contracts for the purchase of patented products (Hodgeman v. City of San Diego (1942) 53 Cal. App. 2d 610); contracts for the provision of services or the construction of public improvements by a government regulated monopoly (Los Angeles G. &. E. Corp. v. Los Angeles, supra, 188 Cal. 307; County of Riverside v. Whitlock, supra, 22 Cal.

App. 3d 863); contracts for experimental or unique products and/or services (Hiller v. City of Los Angeles, supra, 197 Cal.App.2d 685); and actions or contracts for the acquisition or disposition of property for a particular use and with a special value to one person (Orange County Water Dist. v. Bennett, supra, 156 Cal.App.2d 745; Meakin v. Steveland, Inc. supra, 68 Cal. App.3d 490).

In the case at bench, the trial court determined the matter and gave notice of its intended decision by minute order of April 3, 1978, as follows:

"Matter, heretofore submitted on March 20, 1978, is now determined.

"The court, having studied all of the evidence including, without limitation, evidence bearing on respondent's statutory purpose, the manner in which it is and has been obliged to accomplish

that purpose, and the manner in which that purpose must be and has been financed, finds that the contract here in question is such that respondent's ability to operate would be substantially impaired absent a prompt validating procedure as to such contract, within the meaning of Walters v. County of Plumas, 61 Cal.App.3d 460 (1976). Accordingly, Chapter 9 of Title 10 of Part 2 of the Code of Civil Procedure (commencing with Section 860) applies, and this action is barred by the 60 day limitations of sections 863 and 860.

"Having reached that conclusion, the court makes no determinations of any other aspect of the case, except that respondent is not estopped from asserting said 60 day bar.

"This order shall constitute notice of the court's intended decision

to enter judgment for respondent, whose counsel shall prepare, serve and submit a proposed form of judgment and, if requested, proposed findings of fact and conclusions of law. The clerk is directed to mail a copy of this order to counsel for all appearing parties this date." (Emphasis added.)

Findings of fact and conclusions of law were signed and filed on June 15, 1978, over appellant's objections. Appellant's requested special findings were refused.

The findings of fact trace the history of this redevelopment project and of the financing and letting of the contracts regarding it. The findings go on with particularity stating:

"21. On November 2, 1977, the governing body of the PRA at its regular public meeting awarded and authorized

execution of a negotiated contract [i.e., the contract the validity of which is questioned in this action] for construction of the subterranean garage to Ernest W. Hahn, Inc. not to exceed a guaranteed maximum price of $11,939,466 according to the terms of said contract. Said maximum price was based on the commencement of construction date of November 15, 1977, and the amount of $11,335,360 provided for in the First Implementation Agreement plus the sum of $595,068 which sum represents $56,676.80 per month for the period between January 1, 1977, and November 15, 1977. Petitioner was present at said PRA regular meeting of November 2, 1977, and was thus aware of the award and authorization of said contract. The award of the contract was made in reliance upon a written opinion dated October 4, 1977, of the Law

Offices of Eugene B. Jacobs, General Counsel to the Agency, that the competitive bidding requirements of Health and Safety Code Section 33422 were not applicable to the construction contract for the subterranean garage which is to be the support for and integrated with and provide access to the Retail Center. (Emphasis added.)

"22. On December 15, 1977, the PRA sold and awarded $26 million tax allocation bonds to finance the construction by the PRA of the public parking facilities for the Retail Center. The official statement with respect to said bonds stated that the contract identified in Finding No. 21 had been awarded in reliance of the opinion identified in Finding No. 21. The bonds are to be paid partially from tax increments generated by the Retail Center which will begin to

flow when the Retail Center is constructed.

"23. The PRA's statutory purpose, pursuant to the Community Redevelopment Law, the Plan and the purpose and intent of the City of Pasadena with respect to the Plan and the Downtown Redevelopment Project is to eliminate the conditions of blight in the Downtown Redevlopment Project Area and to redevelop said area pursuant to the Plan. The contract identified in Finding No. 21 is directly linked to and is part of the PRA's /Agency's/ method of financing the public costs of the Retail Center and the redevelopment of the Downtown Redevelopment Project Area, the purpose of the PRA in the implementation of the Plan and the manner in which such purpose of the PRA must be financed and has been financed. The ability of the PRA to operate and

accomplish its statutory purpose and the purposes of the Plan would be substantially impaired unless the contract identified in Finding No. 21 is subject to a prompt validation procedure. (Emphasis added.)

"24. The contract identified in Finding No. 21 is a contract to the validation procedures contained in Chapter 9 (commencing with Section 860) of Article 10 of Division 1 of the Code of Civil Procedure. Any action by an interested person challenging the validity of said contract must be brought within 60 days after the PRA awarded and authorized the contract identified in Finding No. 21 which was on November 2, 1977.

"25. There is no evidence of any acts of the PRA which would estop the PRA from asserting the bar of the 60 day

statute of limitation under Code of Civil Procedure Section 860 and 863.

"26. This action was commenced on January 26, 1978, which is 85 days after the award, on November 2, 1977, of the contract identified in Finding No. 21."

We proceed now to discuss the applicable code sections.

Government Code section 53511 provides that a local agency may bring an action to determine the validity of its bonds, warrants, contracts and evidence of indebtedness pursuant to chapter 9 (commencing with section 860) of title 10 of Part 1 of the Code of Civil Procedure. Government Code section 53511 defines local agency as any city, county, city and county, public district or any public or municipal corporation, public agency or public authority. Agency is a local

agency within the meaning of Government Code section 53510.

Section 860 provides that a public agency may bring an action to determine the validity of any matter which was authorized to be determined pursuant to chapter 9 of title 10 of part 1 of the Code of Civil Procedure. Section 864 provides that for the purposes of said chapter 9 of title 10 of part 1 of the Code of Civil Procedure, contracts shall be deemed to be in existence upon the date of their authorization and that contracts shall be deemed authorized as of the date of adoption by the governing agency of the public agency of a resolution approving the contract and authorizing its execution.

Section 863 provides that if no action has been brought by the public agency pursuant to chapter 9 of title 10

of part 2 of the Code of Civil Procedure to determine the validity of a matter within 60 days after the existence of a matter, any interested person may bring an action, within the time prescribed by section 860 (i.e., 60 days), to determine the validity of the matter.

Appellant contends that reversal is required because of the failure of the trial court to find on a material fact after a request for special findings on that fact. Appellant's contention is that, as no resolution or ordinance was adopted with respect to the authorization or execution of the contract here in question, the limitation period did not start to run. The transcript of the hearing before the trial court of March 7, 1978, wherein Michael V. McIntire appeared as attorney for appellant, contains the following colloquy:

"MR. McINTIRE: Excuse me, Your Honor. May I interrupt for a moment with respect to one of those facts.

"The resolution authorizing the contract was passed on November 2, but the contract, which is Exhibit 1 to the respondent's answer, discloses that the contract was signed on February 8.

"THE COURT: All right.

"MR. JACOBS [attorney for respondent]: That's right, Your Honor.

"THE COURT: If you are all in agreement as to that, then I will amend my statement.

"Do you agree with that fact?

"MR. McINTIRE: Yes, Your Honor. I have no reason to dispute it.

"THE COURT: All right.

"MR. JACOBS: It was actually signed at that point. It was signed as of November 2. The authorization took place

on November 2.

"THE COURT: Well, the resolution was adopted November 2.

"MR. JACOBS: November 2, yes, Your Honor.

"MR. BERKMAN: Yes, Your Honor.

"MR. McINTIRE: Yes, Your Honor."

Even if counsel for appellant was wrong in his March 7, 1978 statement that there was a resolution passed November 2, 1977, authorizing the contract here in dispute and the matter was passed only by motion of the governing body of the Agency, the result would be the same as if a formal resolution or ordinance had been passed.

The aforementioned finding number 21 that "On November 2, 1977, the governing body of the PRA [Agency] at its regular public meeting awarded and au-

thorized execution of a negotiated contract for construction of the subterranean garage to Ernest W. Hahn, Inc. . . ." is correctly dispositive of the issue. In Smith v. Mt. Diablo Unified Sch. Dist. (1976) 56 Cal. App.3d 412, the Court of Appeal held (at pp. 416-417) that a motion passed by the governing body of a public entity was the requisite approval of the contract and authorization of its execution, "as a motion, is the equivalent of a resolution under such circumstances" in the following language:

"At the time the written bid was accepted by the Board at its January 29 meeting, a contract was formed. (United States v. Purcell Envelope Co., 249 U.S. 313, 319-320 [63 L.Ed. 620, 624-625, 39 S.Ct. 300]; Berkeley Unified Sch. Dist. v. James I. Barnes Const. Co., 112 F. Supp. 396, 398-399; City of Susanville

v. Lee C. Hess Co., 45 Cal.2d 684, 694 [290 P.2d 520] 15 Ops. Cal. Atty. Gen. 123, 125.) The motion of the Board, passed by a vote of four to one, was therefore the requisite approval of the contract and authorization of its execution, as a motion, is the equivalent of a resolution under such circumstances. (5 McQuillin, Municipal Corporations (1969 rev. vol.) section 15.02, pp. 43-45, section 15.06, pp. 56-58, section 15.08, pp. 63-65; cf. City of Sausalito v. County of Marin, 12 Cal.App.3d 550, 565-566 [90 Cal. Rptr. 843]; McPherson v. Richards, 134 Cal.App. 462, 466 [25 P.2d 534].)" (Emphasis added.)

We here hold, as the court did in Smith v. Mt. Diablo Unified Sch. Dist., supra, 56 Cal.App.3d 412, that the award and authorization for the execution of the contract at the November

2, 1977 regular public meeting of Agency's governing body was the equivalent of a resolution under such circumstances. Alternatively, appellant's attorney conceded at the March 7, 1978 hearing in the trial court that the resolution was passed, and thus in either event we hold that no material fact was omitted from the findings of fact regarding the award and authorization of the contract in question.

We next consider the applicability of the validation sections (860 through 870) as a bar to this action. The award and authorization was made at the regular public meeting of Agency's governing body on November 2, 1977, at which meeting appellant was present and aware of the award and authorization of this contract. If sections 860 through 871 apply to contracts of this nature,

the contract was in existence as of November 2, 1977, within the meaning of section 864, which provides in pertinent part: ". . . contracts . . . shall be deemed to be in existence upon their authorization . . . and contracts shall be deemed authorized as of the date of adoption by the governing body of the public agency of a resolution or ordinance approving the contract and authorizing its execution."

The heart of the dispute between appellant and respondent focuses on whether this is a "contract" of the type intended to be covered by the provisions of sections 860, 863, 864 and 869.

Smith v. Mt. Diablo Unified Sch. Dist., supra, 56 Cal.App.3d 412, analyzing the type of contracts intended to be covered by sections 860 through 871, reviews the applicable cases and comments

as follows (at pp. 418-420):

"Only two cases have previously analyzed the precise statutes in issue here. Phillips v. Seely, 43 Cal. App. 3d 104 [117 Cal. Rptr. 863], was a taxpayers' action challenging the validity of a contract between a county board of supervisors and a private party for the rendition of legal services. The court unanimously held that 'the contract for rendition of legal services to the county by Warren was not subject to sections 860 and 863,' in spite of the language of Government Code section 53511. (43 Cal. App.3d at pp. 111, 112.)

"This result in Phillips rested almost entirely upon certain dicta in the Supreme Court opinion in City of Ontario v. Superior Court, 2 Cal. 3d 335 [85 Cal. Rptr. 149, 466 P.2d 693]. In that decision, the court considered at length the

question presented in the instant action, but decided the case on the ground that the 'complex and debatable' issue of applicability at least constituted the 'good cause' required by section 863 of the Code of Civil Procedure for relief from default (for failure to comply with the summons procedure of the validating statutes). (2 Cal.3d at pp. 345-347.) Although not controlling, the dicta is entitled to substantial weight, particularly in view of its thoroughness. (San Joaquin etc. Irr. Co. v. Stanislaus, 155 Cal. 21, 28 [99 Cal.Rptr. 365]; Granger v. Sherriff, 133 Cal. 416, 417 [65 P. 873]; In re Olson, 37 Cal.App.3d 783, 789 [112 Cal.Rptr. 579].)

"It is clear that the language of Government Code section 53511, while perhaps appearing unambiguous and unqualified, cannot be so deemed in view

of the legislative background. It is true that where the meaning of a statute is plain and unambiguous, and there is no uncertainty as to legislative intent, there is no need for construction and courts should not indulge in it. (Caminetti v. Pac. Mutual L. Ins. Co., 22 Cal.2d 344,354 [139 P. 2d 908].) However, '"The literal meaning of the words of a statute may be disregarded . . . to give effect to manifest purposes that, in the light of the statute's legislative history, appear from its provisions considered as a whole."' (County of Sacramento v. Hickman, 66 Cal. 2d 841, 849, fn. 6 [59 Cal.Rptr. 609, 428 P.2d 593], quoting Silver v. Brown, 63 Cal.2d 841, 845 [48 Cal.Rptr. 609, 409 P.2d 689].)

"The Supreme Court enumerated in City of Ontario, various aspects of

the legislative history suggesting inapplicability of the validating statutes to contracts of the type here in question. Certain other features of that historical background, however, suggest an opposite interpretation. Most of the statutes enacted simultaneously with the validating act included language involving bonds and assessments. Some, however, referred to validation of contracts; although most of these latter concerned contracts with other -- often federal -- agencies, some involved contracts of acquisition and construction.

"Thus, Water Code section 43730 was enacted (Stats. 1961, ch. 1531, p. 3367), and its reference to 'contracts . . . or the taking of any other action by the district or by the board' clearly encompasses powers previously granted to enter into contracts of construction or

improvement. (Wat. Code, sections 43300-43309.) Streets and Highways Code section 5265 (Stats. 1961, ch. 1523, p. 3361), likewise relating to 'the validity of any contract,' has reference to prior sections dealing with contracts for construction, and for acquisition of materials, supplies and equipment. (Sts. & Hy. Code, section 5240 et seq.) Similarly, Streets and Highways Code section 10601 (as amended by Stats. 1961, ch. 1526, p. 3364) relates in part to contracts for construction of improvements. (Sts. & Hy. Code, section 10500 et seq.) Similar language in the numerous uncodified Water Act provisions enacted simultaneously with Code of Civil Procedure sections 860-870 reaffirms the conclusion that, at least in certain instances, the Legislature understood the word 'contracts' in section 864 to include matters

other than 'the limited topic of a local agency's financial obligations.' (City of Ontario, supra, 2 Cal.3d at p. 344.)

"This is not dispositive of the issue, however, for it must be apparent that 'contracts' as used in section 864 had no static meaning. Rather, the term must be defined by the legislative context in which it appears in particular follow-up enactments. [Emphasis in original.] Thus, although the unqualified word 'contract' is utilized in a number of the statutes created simultaneously with the validating act, it is clear that in some of these sections no broad meaning is intended or even possible. (See e.g., Wat. Code, sections 23225, 35855.) The Supreme Court's admonition that 'under well-known canons of statutory interpretation, [the language of Gov. Code, section 53511] . . . should ordi-

narily be given the same meaning as it had in the earlier statute [section 864]' (City of Ontario, supra, 2 Cal. 3d at p. 343) is therefore of little guidance in construing Government Code section 53511." (Emphasis added.)

Walters v. County of Plumas (1976) 61 Cal.App.3d 460, involved an action by a taxpayer against a county arising out of the implementation of a solid waste disposal program. Plaintiff's complaint sought to invalidate franchises for impropriety in bidding and award procedures and by its third cause of action to set aside a guarantee agreement by the county to assist the franchisees in financing the purchase of heavy equipment to be used in carrying out the purpose of the plan. After holding chapter 9 (i.e., sections 860 through 871) inapplicable to the matters pleaded

in other causes of action, the Walters court at page 468 considered the third cause of action stating: "We perceive the essential difference between those actions which ought and those which ought not to come under chapter 9 to be the extent to which the lack of a prompt validating procedure will impair the public agency's ability to operate. The fact that litigation may be pending or forthcoming drastically affects the marketability of public bonds; it has little effect upon such matters as a contract with a public defender or the purchase of a computer. We feel that the possibility of future litigation is very likely to have a chilling effect upon potential third party lenders, thus resulting in higher interest rates or even the total denial of credit, either of which might well impair the county's

ability to maintain an adequate waste disposal program. Accordingly, we hold that Code of Civil Procedure sections 860-870 are applicable to the third cause of action."

The trial court in the case at bench considered the evidence of respondents' statutory purpose, the manner in which it had been and is obliged to carry out its purpose and the manner in which that purpose must be, and is, being financed, found that the questioned contract is such that respondents' ability to operate would be substantially impaired absent a prompt validating procedure as to such contract, and accordingly, held that chapter 9 of title 10 of part 2 of the Code of Civil Procedure (commencing with section 860) applies, and that this action is barred by the 60-day limitations of sections 860 and 863.

We agree. The negotiated contract for the construction of the subterranean garage is an integral part of the whole method of financing the public costs associated with the retail center. The financing is by bonds issued by the Agency to be paid from tax increments allocated to the Agency. The record indicates that if completion of the retail center was delayed beyond March 1, 1980, because of delay in commencement of construction, a loss of tax increment revenue of $1,556,000 would result for the 1981-1982 fiscal year. There was evidence that if the contract were competitively bid, a delay of approximately 14 months would have resulted. It is uncontroverted that a considerable delay would have resulted. The ability of the Agency to pay its bonds, dependent in large part upon the flow of tax increment

monies resulting from the completion of the retail center, was thus directly linked to the award of the questioned contract.

A considerable delay, and certainly one of 14 months, would impair the ability of the Agency to pay the bonds and to operate and carry out the redevelopment plan. The contract is inextricably bound to the Agency's financial obligations. On December 15, 1977 (approximately six weeks after awarding this contract), the official statement with respect to the bonds in the amount of $26,000,000 sold and awarded on December 15, 1977, stated that the contract had been authorized and awarded on November 2, 1977, based upon the opinion of the Agency's general counsel that the bidding requirements were not applicable to the contract for the construction of

the subterranean garage. These bonds were intimately and inextricably bound up with the award of this contract. Delay in the completion of the retail center because of the delay which would inevitably have resulted if the contract had been competitively bid and would have had a direct bearing on the financial ability of Agency to meet its financial obligations and statutory purpose.

These conclusions compel the result we reach here. The lack of a prompt validating procedure would impair this public agency's ability to operate and carry out its statutory purpose. We hold that chapter 9 of title 10 of part 2 of the Code of Civil Procedure (commencing with section 860) applies and that this action, which was not commenced until January 26, 1978, more than 60 days after the contract came into existence on

November 2, 1977, is barred by the 60-day limitation provisions of sections 860 and 863.

Respondents are not estopped from asserting the bar of the 60-day limitations. Appellant was present at the regular public meeting of the governing body of Agency, when the contract was awarded and its execution authorized. She knew of its existence on that date and there is no evidence in the record to show that she delayed filing her petition for the writ in reliance on anything said or done by respondents.

Appellant's motion to tax costs is not well taken. Appellant contends the costs arose out of a result of the trial court's refusal to allow testimony in open court.

At all times relevant, rule 106 of the Manual of Policy and Procedures

for the Writs and Receivers Department of the Superior Court of Los Angeles County provided that mandamus proceedings brought under section 1085 "involve presentation of evidence for the first time at the mandamus trial" (appellant's counsel having stated in open court on March 7, 1978, that this was a mandamus proceeding under section 1085). Rule 106 provided further that : "Usually, evidence counsel contemplates eliciting at the trial can be obtained by way of declarations, affidavits or stipulations . . . and because of the limited time available to hear these matters in Department 85, it is requested that counsel so obtain the evidence, if at all possible. . . . This procedure can save both counsel a great deal of time." This rule was available to counsel for appellant well before March 7, 1978.

When the method of taking evidence by way of declarations, affidavits and depositions was announced by Judge Phillips, no objection was made by counsel to this procedure.

Further, and most significantly, the respondents, not appellant, were the prevailing parties. (section 1033.)

The foregoing determinations obviate the necessity of discussing the other issues raised.

The judgment and order are affirmed.

No party shall recover costs from the other in this court.

NOT FOR PUBLICATION IN THE OFFICIAL REPORTS

McCLOSKY, J.*

We concur:

KINGSLEY, Acting P.J.

WONG, J.*

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* Assigned by the Chief Justice of California.

CLERK'S OFFICE, SUPREME COURT

4250 State Building
San Francisco, California 94102

6/4/80

I have this day filed Order

Hearing denied

In re: 2 Civ. No. 56242

Graydon

vs.

Pasadena Redev. Agency

Respectfully,

Clerk

(Stamps) 8 C and 7

Postmarked San Francisco, Calif.

Jun-4'80

Addressed to:

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